As has occurred in every other state where section 271 relief has been granted, SBC's long-distance entry in California will stimulate both long-distance and local competition. Indeed, the consistent evidence of consumer savings where section 271 relief has been granted indicates that consumers in California will likely save hundreds of millions of dollars. In a recent empirical study of the consumer-welfare benefits from BOC entry into long-distance telecommunications markets in New York and Texas, the authors found statistically significant evidence that BOC entry enabled average consumers to save nine percent on their monthly interLATA bills in New York and 23 percent on their bills in Texas. In addition, they found statistically significant evidence that CLECs have a substantially higher cumulative share of the local exchange market in states where BOC entry has occurred.[60]

A. Consumers Clearly Benefit from Bell Company Entry into the In-Region, InterLATA Market

Section 271 approval vastly accelerates both long distance and local competition. Chairman Powell has recognized "a correlation between the process for approving applications and growing robustness in the markets."[61] There is every reason to believe that this correlation will continue in California.[62]

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[60] Jerry A. Hausman, Gregory K. Leonard & J. Gregory Sidak, The Consumer-Welfare Benefits from Bell Company Entry into Long-Distance Telecommunications: Empirical Evidence from New York and Texas 3 (Jan. 9, 2002) ("Consumer-Welfare Benefits"), at http://papers.ssrn.com/ sol3/papers.cfm?abstract_id=289851.

[61] See Rodney L. Pringle, Powell Says Innovation Will Drive Telecom Upswing, Communications Today, June 6, 2001 (internal quotation marks omitted).

[62] See Consumer-Welfare Benefits, supra note 60, at 13 ("We predict that, when the BOCs receive section 271 approvals in other states, a similar significant decrease in long-distance prices will occur that leads to consumer benefits."). Consumers in New York alone have saved up to $700 million a year as a result of greater competition. See Telecommunications

SBC's entry into long-distance markets in California, like that of the other BOCs, is particularly pro-competitive because it will give consumers an attractive alternative single source (and bill) for local and long-distance services, placing significant pressure on the competition to provide lower prices, enhanced services, and greater quality. Survey after survey has shown customers' confusion and frustration with telephone bills.[63]

With simpler long-distance rates and the convenience of one all-inclusive telephone bill, the 271-approved BOCs have attracted an unexpectedly high number of customers. After only six months in Texas, SBC had 1.7 million long-distance lines; after only nine months, that number had grown to 2.1 million lines.[64] Twelve months after entry in Texas and four months after entry in Oklahoma and Kansas, SBC had a total of 2.8 million long-distance lines in service.[65]

BOC entry into long-distance markets has invigorated competition in local markets as well. On March 5, 2002, while BellSouth's Georgia/Louisiana Application was pending, AT&T announced that it would offer BellSouth customers in Georgia, particularly residential

Research & Action Center, 15 Months After 271 Relief: A Study of Telephone Competition in New York 8-9 (Apr. 25, 2001) ("An average consumer that switched to Verizon for long-distance service will save between $3.67 and $13.94 a month . . . . [P]hone competition has brought up to $700 million of savings to New York consumers.").

[63] See SBC Communications to Launch Long Distance Service in Texas, Bus. Wire, July 7, 2000 ("Seventy-eight percent of those surveyed incorrectly believe the average amount paid per minute for a long-distance call is between 5 and 14 cents. According to a recent survey by Gartner Group, the average consumer is paying 22 cents a minute for long distance.").

[64] See Michael J. Balhoff, et al., Legg Mason – Equity Research, Section 271 Relief: Bells Race IXCs/Each Other for New Markets/Revenues Table 4 (June 24, 2001).

[65] See SBC, Investor Briefing 7 (July 25, 2001), at http://www.sbc.com/Investor/Financial/Earning_Info/docs/2Q_IB_FINAL_Color.pdf.

consumers, a "new choice for local phone service."[66] WorldCom earlier announced a similar mass entry into BellSouth's Georgia market – and immediately began signing up more than 16,000 customers a month.[67] And, more recently, WorldCom has announced the availability of its "The Neighborhood" plan in California.[68] The fact that the nation's two largest long-distance companies are already competing widely for both residential and business customers in California demonstrates that section 271 relief (and the imminence of such relief) spurs competition.

It is well-established that the long-standing commitment of many state commissions (including the CPUC) to universal service has resulted in residential rates that are in many cases below cost.[69] Unsurprisingly, CLECs generally have shown little appetite for competing to serve customers at such below-cost rates. Nevertheless, in states where BOCs have received 271 relief

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[66] Letter from Joan Marsh, AT&T, to William Caton, Acting Secretary, FCC, CC Docket No. 02-35, Attach. (FCC filed Mar. 5, 2002).

[67] Walter C. Jones, PSC Opens Long-Distance Line for BellSouth, Florida Times-Union, Oct. 3, 2001.

[68] See MCI, The Neighborhood, at http://www.theneighborhood.com/res_local_service/jsps/join.jsp?subpartner=FREEMONTH.

[69] See, e.g., The Telecom Act Five Years Later: Is It Promoting Competition?, Hearing Before the Subcomm. on Antitrust, Business Rights, and Competition of the Senate Comm. on the Judiciary, 107th Cong., 1st Sess. 6 (May 2, 2001) (testimony of Pat Wood, Chairman, Texas Public Utility Commission) ("It will be difficult for competitors to ever come into the Texas market, just as it will be difficult to get into the California electricity market, if you can't sell for the proper price or compete with the proper price which you just bought for ten dollars more. . . . [I]t is important to know that residential rates were purposely subsidized for 80 years . . . ."); Report on Scope of Competition in Telecommunications Markets of Texas at 85 (Tex. PUC Jan. 2001) (to the extent competition is less viable for certain rural and residential customers, that is "rooted in underlying market conditions and in the historical regulatory pricing system for local telephone service").

– and where the incumbent long-distance carriers have accordingly felt the need to act to preserve their long-distance revenues – competition for residential customers has increased substantially. AT&T boasted that, following section 271 approval in New York, AT&T was "winning more of Verizon's local customers than [Verizon is] taking of [AT&T's] long-distance customers."[70] And in Texas, WorldCom reaffirmed its aggressive drive to attract local customers: "MCI WorldCom continues to sign up new customers in Texas . . . . 'We're very committed to local phone service. . . .'"[71]

Along with discounts on local/long-distance bundles and reduced intrastate rates, the incumbent interexchange carriers are also leveraging advanced technologies. According to former FCC Chairman William Kennard, "We have witnessed a dynamic market for broadband services develop as a result of the opening of local markets in Texas and New York."[72]

This Commission as well has recognized that "states with long-distance approval show [the] greatest competitive activity" in local telecommunications.[73] "BOC entry [into the New York and Texas long-distance markets] caused a significant increase in the CLECs' cumulative

[70] Speech by C. Michael Armstrong, Chairman & CEO of AT&T, at the National Press Club, Washington, D.C. (Feb. 7, 2001), at http://www.att.com/speeches/item/0,1363,3662,00.html.

[71] See Tom Fowler, Telecom Issues Come Calling, Houston Chron., Jan. 7, 2001, at 1 (quoting MCI WorldCom spokeswoman Leland Prince).

[72] William E. Kennard, Chairman, FCC, Statement Before the Committee on the Judiciary United States House of Representatives on H.R. 1686 – the "Internet Freedom Act" and H.R. 1685 – the "Internet Growth and Development Act" (July 18, 2000) ("Kennard Testimony"), at http://www.fcc.gov/Speeches/Kennard/Statements/2000/stwek096.html.

[73] See FCC News Release, Federal Communications Commission Releases Latest Data on Local Telephone Competition (May 21, 2001).

market share. Most of the change in CLEC market share is attributable to AT&T Local and MCI Local, which now must compete to keep their residential local customers by offering bundles of local and long-distance services, because the BOC can now offer a similar package to residential consumers."[74]

In sum, BOC 271 entry is a catalyst for increased competition in all segments of the communications marketplace – long-distance, local, and advanced services. In the words of former Chairman Kennard, "We need only review the state of competition in New York and Texas to know the Act is working."[75]

B. Pacific Is Subject to Comprehensive Performance Reporting and Monitoring Requirements

The Commission has repeatedly noted that "the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest." Kansas/Oklahoma Order ¶ 269; see, e.g., Second Louisiana Order ¶ 363. Pacific's performance reporting and remedy plan provides precisely such "probative evidence." The plan is based on comprehensive performance measurements developed in collaboration with CLECs and state and federal regulators and expressly approved by the CPUC.

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[74] Consumer-Welfare Benefits, supra note 60, at 12; see also Bruce Hight, SW Bell Will Start Selling Long-Distance on Monday; AT&T, WorldCom Already Have Begun Counterattacks, Austin American-Statesman, July 7, 2000, at A1 ("'Bell Atlantic's entry into long-distance – and the entry of AT&T and MCI among others, into local – has lowered costs and lowered rates for consumers, generally across the board'") (quoting Sam Simon, Chairman, Telecommunications Research & Action Center).

[75] Kennard Testimony, supra note 72.

See Johnson Aff. ¶¶ 13-44. The performance data generated by these measurements have been validated by an independent third-party audit, as well as by multiple data reconciliations conducted with interested CLECs. Id. ¶¶ 200-218. Finally, the CPUC has approved a performance remedies plan that provides assurance that Pacific will continue to provide CLECs with nondiscriminatory service in the wake of section 271 relief. Id. ¶¶ 219-240.

Performance Measurements. Pacific's performance measurements are the result of collaborative efforts among Pacific, the CPUC, and interested CLECs to formulate a robust set of metrics to reflect California's extensive experience with local competition. See Johnson Aff. ¶¶ 8-9. These measures track all aspects of Pacific's wholesale performance, including pre-ordering, ordering, provisioning, maintenance, network performance, billing, database updates, collocation, and interface availability. Id. ¶ 22-24.

To assess Pacific's performance on each of these measurements, data are collected monthly and disaggregated on a product-specific basis in accordance with detailed business rules approved by the CPUC. Johnson Aff. ¶ 16; see also Opinion, Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems, D.01-05-087, App. C (Cal. PUC May 24, 2001) (App. C, Tab 71). The performance measurements compare Pacific's wholesale service either directly to the level of service provided to Pacific's retail operations, or to a benchmark. See Johnson Aff. ¶¶ 20, 224.[76] Pacific employs traditional statistical analysis to gauge the significance of apparent differences in performance. Id. ¶ 226; see Decision,

[76] The vast majority of benchmarks used in Pacific's performance plan have been approved by the CPUC. For those submeasures without approved benchmarks, Pacific continues to work with CLECs and the CPUC to establish agreed-upon standards. See Johnson Aff. ¶ 17 & n.29.

Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems, D.02-03-023, at 20-37, 53-54, 68-69 & App. J §§ 3, 7 & Exh. 3 (Cal. PUC Mar. 6, 2002) (App. C, Tab 76).

Pacific makes its performance data available through an Internet website that includes individual CLECs' data (which are not available to other CLECs), aggregated data for all California CLECs, and Pacific's retail data. Johnson Aff. ¶¶ 197-199. Pacific allows access to the raw data underlying particular performance results. Id. ¶ 199.

The FCC has emphasized that the "continuing ability of the measurements to evolve is an important feature because it allows the Plans to reflect changes in the telecommunications industry." Kansas/Oklahoma Order ¶ 275; Texas Order ¶ 425. Though first approved by the CPUC in August 1999, the performance measures now in effect incorporate changes necessitated by the imposition of new requirements since that date, as well as agreed-to modifications based upon Pacific's and CLECs' comprehensive experience implementing the 1996 Act. See Johnson Aff. ¶¶ 17-19. Moreover, the CPUC performance-measures proceeding remains open so that parties may periodically review and propose changes to Pacific's performance measures, and one such review is presently underway. See id. ¶ 17 & n.10. Pacific's measurements have thus evolved – and will continue to evolve – as necessary "to reflect changes in the telecommunications industry." Texas Order ¶ 425.

Independent Data Testing & Data Reconciliations. Pacific's data collection methods and procedures have passed an independent, third-party test conducted by PricewaterhouseCoopers ("PwC") under the direction of the CPUC. See Johnson Aff. ¶¶ 201-209 & Attachs. D, E, & F. The audit process was developed by a steering committee – consisting of Pacific and CLEC representatives – that defined the scope of the audit, selected the auditor, participated in regular status meetings during the course of the audit, and previewed a draft final audit report summarizing the results. See id. ¶ 201.

PwC's December 31, 1999, report confirmed that Pacific's performance data gathering and reporting processes substantially comply with the business rules for each performance measurement, and the report also validated numerical results reported by Pacific. See id. ¶ 205 ("'Our examination of management's assertions regarding Pacific Bell's OSS performance measure systems and processes compliance . . . confirmed that the systems and processes were substantially in compliance with those assertions.'" (quoting PwC Executive Summary and Observations Report, Attach. D at 8)). PwC additionally identified two areas of potential improvement to Pacific's control of data and its reporting of monthly reports, neither of which directly called into question any of Pacific's reported results. See id. ¶¶ 206-207 & n.127. Pacific implemented systems to address those recommendations – a fact that PwC confirmed in its May-June 2000 re-audit of Pacific's data. See id. ¶¶ 208-209. During that re-audit, PwC made additional recommendations, which Pacific promptly implemented. On November 10, 2000, PwC issued a final report verifying that Pacific had addressed each of its recommendations, confirming that Pacific collects and reports data consistent with the rules put in place by the California PUC, and closing its audit. Id. ¶ 209.

The accuracy and reliability of Pacific's data are bolstered by the results of data reconciliations that Pacific has undertaken with interested CLECs. Id. ¶¶ 210-215; see Massachusetts Order ¶ 160 (noting importance of data reconciliations); Texas Order ¶ 57 (stressing that "the data submitted by SWBT . . . have been subject to scrutiny and review by interested parties"). In April 2000, AT&T and Pacific reconciled two months of data for PM 15 (Provisioning Trouble Reports), and jointly concluded that the reported results were correct in all material respects. See Johnson Aff. ¶ 210. Likewise, from October to December 2000, Pacific engaged in a joint data reconciliation with several CLECs, which likewise turned up no significant discrepancies. See id. ¶¶ 211-214.[77]

Incentives Plan. The CPUC has ordered Pacific to implement an incentives plan that will unquestionably "foster post-entry checklist compliance." Texas Order ¶ 423; see Opinion on the Performance Incentives Plan for Pacific Bell Telephone Co., Order Instituting Rulemaking on the Commission's Own Motion, D.02-03-023 (Cal. PUC Mar. 6, 2002). The plan puts more than $50 million at risk each month, see Johnson Aff. ¶ 222, which is approximately the same liability – measured as a percentage of net revenue – that has been approved in previous 271 orders. See, e.g., Texas Order ¶ 424; Kansas/Oklahoma Order ¶ 274 & n.837; New York Order ¶ 436 n.1332; Massachusetts Order ¶ 241 & n.769.

The structural features of Pacific's plan are carefully "designed to detect and sanction poor performance when it occurs." Massachusetts Order ¶ 245. The plan is designed in two tiers. The first tier awards payments to individual CLECs, based on the number of measures that are missed for that CLEC in a given month. See Johnson Aff. ¶¶ 229-236. The Tier I payment amounts for each missed measure increases with the proportion of Pacific "misses" for a month,

[77] In addition, in April 2001, AT&T and Pacific attempted to reconcile UNE-P data for PM 16 (Percent of Troubles within 30 Days for New Orders). Although the parties (by mutual agreement) did not complete the reconciliation, preliminary findings make clear that it did not unearth any systemic problems with Pacific's data tracking and reporting. See Johnson Aff. ¶ 215.

ensuring that penalties (and CLEC compensation) escalate with poor performance. Id. ¶ 234. Likewise, Pacific's Tier I payments increase considerably where performance on a particular measure is chronically out-of-compliance. Id. ¶¶ 229, 235. The second tier of Pacific's plan tracks performance on an industry-wide basis, and assesses penalties when Pacific misses particular performance targets. See id. ¶ 236. As with the Tier I payments, the amount of Tier II payments increase with the number of total misses in a particular month and the number of so-called "chronic" failures. Id. ¶ 237.[78]

The plan is also self-executing, requiring Pacific to make payments in the event of sub-standard performance and requiring Pacific to resort to CPUC procedures if it wishes to object to the assessment. Johnson Aff. ¶¶ 239-240; see Massachusetts Order ¶ 246; Second Louisiana Order ¶ 364. Pacific's monthly procedural cap is not triggered until Pacific has paid $15 million in a particular month. Johnson Aff. ¶ 223. Even then, Pacific is entitled at that point only to a hearing to determine whether in light of all the evidence it should be required to make additional payments. Id.

These provisions establish Pacific's satisfaction of all requirements for an effective performance remedy plan. See, e.g., Texas Order ¶¶ 422-429; New York Order ¶¶ 433-443; Kansas/Oklahoma Order ¶¶ 273-279. Pacific's plan contains clearly stated, comprehensive measures and standards that are designed to detect and sanction deficient performance. As a

[78] The Commission is considering an increase in the incentive payments for so-called "extended chronic" misses – i.e., measures that Pacific misses for six or more consecutive months. See July 23 Proposed Decision at 234-36. Even without those increases, however, the incentive plan ordered by the California PUC is fully sufficient to ensure that Pacific continues to provide nondiscriminatory performance following section 271 relief. See Johnson Aff. ¶¶ 222-238.

result of independent data testing, CLECs and regulators have strong assurance that Pacific's performance reports are accurate. Finally, Pacific will be subject to self-executing payment obligations that provide a meaningful incentive to continue to provide CLECs with nondiscriminatory facilities and services following entry into the in-region, interLATA services market.

C. The CPUC's July 23 Proposed Decision Does Not Undermine SBC's Public Interest Showing

In the July 23 Proposed Decision, Administrative Law Judge Reed considered whether Pacific's entry into the "intrastate interLATA telecommunications, or IEC, market" was consistent with the public interest. See July 23 Proposed Decision at 237. Judge Reed undertook this inquiry pursuant to section 709.2 of the California Public Utilities Code, according to which the state commission must make certain findings prior to issuing any order that would authorize Pacific to participate in the intrastate interLATA market. Under the 1996 Act, however, no such authorizing order from the CPUC is required, and the July 23 Proposed Decision does not purport to hold to the contrary.

Section 709.2, also known for its sponsor as the "Costa Bill," predates the 1996 Act. As its legislative findings make clear, it was enacted in 1994 specifically to promote "Long Distance Telecommunications Consumer Choice," by requiring the California PUC to seek a waiver of the MFJ's prohibition on Pacific's provision of intrastate, interLATA service provided certain conditions were met.[79] With the enactment of the 1996 Act, of course, Congress replaced the

[79] See Cal. Pub. Util. Code § 709.2 statutory note 1; see generally SBC Pacific Bell Telephone Company's (U 1001 C) Opening Comments on ALJ Reed's Section 271 Proposed Decision at 12 & n.20 (Aug. 12, 2002) (App. D, Tab 261) (citing Senate Rules Committee, Third Reading, A.B. 3720, at 4-5 (May 27, 1994)). The conditions contemplated by the statute require

MFJ with a comprehensive federal scheme for authorizing BOC entry into the long-distance markets. Sections 271 and 272 of the 1996 Act expressly grant exclusive authority to the FCC to determine whether the conditions for interLATA entry have been satisfied. Once the FCC has concluded that those conditions are in fact satisfied, it will be unnecessary for the California PUC to issue any order under section 709.2 authorizing entry, and unlawful for it to attempt to deny such entry. As this Commission has explained, "sections 271 and 272, and the Commission's authority thereunder, apply to intrastate and interstate interLATA services provided by the BOCs or their affiliates," and state commissions simply no longer have any authority over the question.[80]

Recognizing this, the July 23 Proposed Decision does not purport to deny Pacific the authority to provide interLATA service, intrastate or otherwise. Rather, it contemplates the imposition of certain conditions on SBC's provision of interLATA service, based in part on the purported inability to "state unequivocally that . . . Pacific's imminent entry into the long distance market in California will primarily enhance the public interest." July 23 Proposed

that (1) competitors have fair, nondiscriminatory, and mutually open access to exchanges; (2) there is no anticompetitive behavior by the local exchange telephone corporation, including unfair use of subscriber contacts generated by the provision of local exchange telephone service; (3) there is no improper cross-subsidization of interexchange telecommunications service; and (4) there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets. See Cal. Pub. Util. Code § 709.2(c)(1)-(4).

[80] First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905, 21929, ¶ 47 (1996), modified on recon., 12 FCC Rcd 2297, further recon., 12 FCC Rcd 8653 (1997) ("Non-Accounting Safeguards Order").

Decision at 258.[81] To the extent the CPUC ultimately adopts any conditions that purport to block Pacific's entry into the intrastate interexchange market, those would be preempted, and we accordingly need not address them here.[82] And, as discussed in more detail below, the July 23 Proposed Decision is wrong about the public interest implications of Pacific's entry into long distance. The evidence Judge Reed relied upon to reach that conclusion is virtually nonexistent. Furthermore, this Commission is in no way bound by the public-interest determinations of the California PUC. This Commission has consistently recognized that it must reach an independent conclusion regarding the public-interest inquiry. Indeed, the Commission has no obligation even to consult the state commission regarding the public interest, much less to give its determination any weight.

1. The July 23 Proposed Decision is Wrong About the Public Interest

To the extent the July 23 Proposed Decision bases its public interest concerns on the state of local competition in California,[83] it is dead wrong. As discussed above, see infra Part I, CLECs in California are already serving between 2.6 and 3.9 million access lines in Pacific's serving area, which translates to an approximate market share of 13 to 18 percent. See J.G.

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[81] The September 4 Alternate Draft suggested some modifications to the conditions proposed by the July 23 Proposed Decision, as did the September 19 Proposed Decision.

[82] See Non-Accounting Safeguards Order ¶ 47 ("[B]ased on what we find is clear congressional intent that the Commission is authorized to make determinations regarding BOC entry into interLATA services, we reject the suggestion by the Wisconsin Commission that, after the Commission has granted a BOC application for authority under section 271, a state nonetheless may condition or delay BOC entry into intrastate interLATA services.").

[83] July 23 Proposed Decision at 258 ("Local telephone competition in California exists in the technical and quantitative data; but it has yet to find its way into the residences of the majority of California's ratepayers.").

Smith Aff. ¶ 8 & Table 1. The vast bulk of these lines are served over CLECs' own facilities, either exclusively or in combination with hundreds of thousands of UNEs leased from Pacific. See id. Table 1 & Attach. A. The state of local competition in California far exceeds what was in place in New York or Texas at the time applications for those states were granted. See id. Attach. D. Contrary to the suggestion of Judge Reed, there is nothing merely "technical" about the competition underway in the California local market.

The remainder of Judge Reed's so-called "findings" in this area are devoid of support in the record. Judge Reed concludes, for example, that "[t]he record does not support the finding that there is no anticompetitive behavior by Pacific Bell." July 23 Proposed Decision at 296 (Proposed Finding of Fact No. 315). Yet to support this conclusion, the decision relies upon two cases of no significance whatsoever. In the first – a case brought more than six years ago by long-distance incumbents AT&T, MCI, and Sprint – a federal district court granted a preliminary injunction against Pacific. The July 23 Proposed Decision declines to note, however, that, in that very same case, the court ultimately ruled in Pacific's favor on the issues relating to Pacific's conduct under the 1996 Act and with respect to the billing disputes at issue. And, although the plaintiffs prevailed in district court on their trade secrets claim, the Ninth Circuit ultimately reversed the district court on that issue.[84] None of the facts related to this case were discussed or included in the July 23 Proposed Decision. It is simply impossible to see what this case has to do with the public interest ramifications of Pacific's entry into long distance.

[84] AT&T Communications v. Pacific Bell, Nos. 99-15668, 99-15736, 2000 U.S. App. LEXIS 23215 (9th Cir. Sept. 8, 2000).

The only other case on which the July 23 Proposed Decision relies – a jury verdict in the Caltech International case[85] – is equally irrelevant to the Commission's public-interest analysis. This case was filed over five years ago by a reseller of telephone service complaining of events occurring six years ago. It was settled, the district court vacated the jury verdict, and no judgment was entered.[86] And, again, the July 23 Proposed Decision made no reference to these critical facts. The July 23 Proposed Decision had no business concluding, on the basis of the outdated and dismissed allegations contained in this lawsuit, that Pacific's conduct has been anticompetitive.[87]

Judge Reed also concluded in the July 23 Proposed Decision that the record did not support a determination that Pacific will not engage in the improper cross-subsidization of its intrastate interLATA services. July 23 Proposed Decision at 296 (Proposed Finding of Fact No. 320). That is so, the theory goes, because the California PUC's "confidence in non-structural safeguards has waned significantly over the last few years." Id. at 253. But even if the CPUC's crisis of confidence were relevant – and it clearly is not – the principal guarantee against

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[85] Caltech Int'l Telco v. Pacific Bell, No. C 97-2105 CAL (N.D. Cal. Dec. 14, 2000).

[86] Caltech Int'l Telco v. Pacific Bell, No. C 97-2105 CAL (N.D. Cal. Jan. 22 & 29, 2001) (Order of Vacatur on Jury Verdict and Stipulation of Dismissal) (App. K, Tabs 72, 73).

[87] Indeed, in 1997, the California PUC dismissed virtually identical CLEC complaints, finding no violations of the federal Act, the FCC's implementation requirements, state law, or Commission orders. In particular, the California PUC concluded that Pacific's "delays and errors were reasonable in light of all the facts and circumstances of the transition to local exchange service." Opinion, MCI v. Pacific Bell, D.97-09-113 at 29 (Conclusion of Law 10) (Cal. PUC Sept. 24, 1997) (App. K, Tab 63). The California PUC also found that Pacific had not violated section 709 of the Public Utilities Code, which, in its view, "mirrors the intent of the federal Telecommunications Act." Id. at 19.

improper accounting practices and cross-subsidization is the structural, statutory safeguard of section 272. As long as Pacific, when dealing with its long-distance affiliate, complies with its obligations under section 272, there is no reasonable basis for concluding that there remains a risk of cross-subsidization:

> The Commission set standards for compliance with section 272 in the Accounting Safeguards Order[88] and the Non-Accounting Safeguards Order. Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate. In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.

New York Order ¶ 401.[89]

Finally, the July 23 Proposed Decision concludes that Pacific has "failed to show that there is no substantial possibility of harm to the competitive intrastate interexchange telecommunications market by its long distance entry in California." July 23 Proposed Decision at 297 (Proposed Finding of Fact No. 323). According to Judge Reed, this possibility of harm "exists from Pacific's continuing role as the Preferred Interexchange Carrier (PIC) administrator as well as from Pacific's proposed joint marketing plans." Id. at 256. Pacific's joint marketing plans are fully consistent with the 1996 Act and this Commission's prior orders. See Part III, infra. And this Commission has consistently granted section 271 applications notwithstanding the fact that the Bell company would continue to assume the role of PIC administrator. There is nothing in the record to call into question Pacific's actual performance as the PIC administrator

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[88] Report and Order, Implementation of the Telecommunications Act of 196: Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539 (1996) ("Accounting Safeguards Order").

[89] See Non-Accounting Safeguards Order ¶¶ 15-16; Michigan Order ¶ 346.

since intraLATA presubscription was implemented in California in May 1999, see Deere Aff. ¶ 193, or SBC's actual performance in other states in which section 271 authority has already been granted.[90]

In short, when measured against the clear and well-documented public interest benefits that will come with SBC's entry into the interLATA market in California, the July 23 Proposed Decision's unsupported assertions do not measure up. Those assertions plainly do not rebut the presumption that, if the competitive checklist is satisfied, "BOC entry into the long distance market will benefit consumers and competition." Georgia/Louisiana Order ¶ 281.

2. The July 23 Proposed Decision Is Irrelevant to This Commission's Determination Under Section 271(d)(3)(C)

Even if the July 23 Proposed Decision's discussion of the public interest had any basis in the record or fact, it would still be beside the point. This Commission has consistently looked to the state commission to confirm that the competitive checklist is satisfied and that, accordingly, the local market is sufficiently open to allow CLECs a meaningful opportunity to compete. As this Commission explained over five years ago, "[w]e believe that the state commissions' knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local

[90] The July 23 Proposed Decision also requires Pacific to file "a report or study detailing the costs of separating Pacific into two parts and divesting the segment covering wholesale network operations." July 23 Proposed Decision at 259. Whatever the merits of further analyzing the structural-separation proposal – and there are none – this Commission has already rejected the idea of imposing any such requirement as part of the public-interest analysis. See New Jersey Order ¶ 183 ("the Act does not require structural separation as a condition to section 271 approval, and we do not require it here").

networks to competition." Michigan Order ¶ 30 (emphasis added).[91] But, in contrast to this Commission's obligations under section 271 to ensure that an applicant has complied with Track A and the 14-point competitive checklist, this Commission has no obligation to consult with the state commission to determine whether the Bell company's requested authorization is "consistent with the public interest, convenience, and necessity." See 47 U.S.C. § 271(d)(2)(B) (obligation to consult with the state commission limited to "the requirements of subsection (c)").

Indeed, this Commission has not hesitated in the past to disagree with a state commission's views regarding whether granting a particular section 271 application was in the public interest. In its South Carolina Order, this Commission was

> mindful of the fact that the South Carolina Commission . . . believes that BellSouth's entry into the long distance market in that state is in the public interest. We must respectfully disagree. In giving substantial weight to the Department of Justice's evaluation, as required by Congress, that BellSouth's market is not open to competition, and in conducting our statutorily required independent assessment, we reach a different conclusion.

South Carolina Order ¶ 27.

As this Commission has analyzed the public-interest inquiry, the critical question is whether the July 23 Proposed Decision's discussion of the public interest calls into doubt the conclusion that the local exchange market in California is open. It does not. That discussion is based on conclusory assertions that in any event "do not relate to the openness of the local

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[91] Of course, even with respect to those areas in which this Commission is required to consult the state commission, "as the expert agency charged with implementing section 271, [this Commission is] required to make an independent determination of the meaning of statutory terms in section 271." First Oklahoma Order ¶ 15; see also First Louisiana Order ¶ 9 (recognizing that the Commission "has discretion in each section 271 proceeding to determine the amount of deference to accord to the state commission's consultation, in light of the nature and extent of the state commission's proceedings on the applicant's compliance with section 271 and the status of local competition").

telecommunications markets to competition" and are accordingly irrelevant to "the public interest standard." New Jersey Order ¶ 190. Whatever the California PUC might require as a matter of state law to enhance the public-interest benefits of Pacific's entry into the long-distance markets, there can be no question that, under the standards consistently applied by this Commission, Pacific's local market is open to competition and its entry in the interLATA, interexchange market in California will benefit California consumers.

D. There Is No "Price Squeeze" in California

In the wake of the D.C. Circuit's decision in Sprint Communications Co. L.P. v. FCC, 274 F.3d 549 (D.C. Cir. 2001), AT&T and WorldCom have attempted to rebut the public interest showing in certain 271 applications with the claim that the applicants' UNE rates, when considered in connection with its retail rates, effect a price squeeze that "'doom[s] competitors to failure'" in the local market. See, e.g., Vermont Order ¶ 66 (quoting Sprint, 274 F.3d at 554). In light of the California PUC's Interim Rate Order, it is difficult to conceive how the CLECs could sustain any argument that the UNE rates currently in effect in California create a price squeeze. On the contrary, AT&T recently announced a major marketing initiative in California precisely because Pacific has in place "'reasonable wholesale prices'" thanks to "'the [CPUC's] order earlier this year.'" [92] And as Dale Lehman confirms in his affidavit (App. A, Tab 13), Pacific's UNE rates, when considered in connection with its retail rates, leave a margin that is more than sufficient for an efficient competitor to compete.

[92] See Press Release, AT&T Enters California Residential Local Phone Market (Aug. 6, 2002) (quoting Ken McNeely, President, AT&T Communications of California); see also UBS Warburg, Telco Wake-Up Call (Aug. 7, 2002) (concluding that the Pacific's UNE-P prices allow AT&T to sustain "approximately 60% margins including the subscriber line charge").

In any case, the evidence of local competition in California makes clear that competitors are not in fact "doomed . . . to failure" in the local market. Sprint, 274 F.3d at 554; see supra Part I. That market is not at all characterized "by relatively low volumes of residential competition from non-BOC firms." Sprint, 274 F.3d at 553. Because there is no lack of residential competition that needs explaining, the rationale for even considering a price squeeze is absent here.

Moreover, competitors in California can avail themselves of resale and other non-UNE-based entry vehicles in California – as many are, in fact, doing, see J.G. Smith Aff. Table 1 – that would render any supposed UNE/retail price squeeze completely ineffectual. And local competitors in California have an ample presence in long-distance and business markets – a presence they can "leverage . . . into an economically viable residential telephone service business." Vermont Order ¶ 71.

IV. SBC WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272

When providing authorized interLATA services in California, Pacific and its long-distance affiliate will operate independently of each other and conduct business on an arm's-length, nondiscriminatory basis in compliance with sections 271(d)(3)(B) and 272. Indeed, Pacific is already operating in accordance with structural separation and nondiscrimination safeguards that will ensure that its long-distance affiliate does not have any unfair advantage over competitors when it sells in-region, interLATA services in California. The FCC has already found that SBC's long-distance affiliate, SBCS, is in compliance with section 272 in Arkansas, Missouri, Texas, Kansas, and Oklahoma. See Arkansas/Missouri Order ¶ 123; Kansas/Oklahoma Order ¶ 257; Texas Order ¶ 396. Because SBC maintains the same structural separation and nondiscrimination safeguards in California as it does in Missouri, Arkansas, Texas, Kansas, and Oklahoma, see Yohe Aff. ¶ 7 (App. A, Tab 24); Carrisalez Aff. ¶ 5 (App. A, Tab 2), SBC also satisfies the requirements of section 272 in California.

Separate Affiliate Requirement of Section 272(a). SBC has established SBCS as a separate affiliate to provide in-region, interLATA services in compliance with the structural separation and operational requirements of section 272. Carrisalez Aff. ¶¶ 6-9. SBCS is a separate entity from Pacific, and neither owns stock of the other. Id. ¶ 8; Yohe Aff. ¶ 9.

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate "shall operate independently from the Bell operating company." 47 U.S.C. § 272(b)(1). For as long as SBCS or any other affiliate is subject to section 272, it will operate in a manner that satisfies both this statutory requirement and the Commission's implementing regulations. Carrisalez Aff. ¶¶ 10-15; Yohe Aff. ¶¶ 10-14. SBCS and Pacific do not jointly own telecommunications transmission or switching facilities, or the land and buildings on which such facilities are located, and will not jointly own such facilities while subject to this restriction under section 272. Carrisalez Aff. ¶ 12; Yohe Aff. ¶ 12. SBCS will not obtain operations, installation, or maintenance services from Pacific (or any other SBC affiliate that is not operated in accordance with section 272) with respect to switching and transmission facilities SBCS owns or leases from a party other than Pacific, for as long as required by section 272. Carrisalez Aff. ¶ 14; Yohe Aff. ¶ 12. Likewise, SBCS will not provide operations, installation, or maintenance services with respect to Pacific's transmission and switching facilities, other than sophisticated equipment Pacific may purchase from SBCS in accordance with Commission rules. Carrisalez Aff. ¶ 13; Yohe Aff. ¶ 12-13.

Consistent with the FCC's application of section 272(b)(2), SBCS maintains its books, records, and accounts in accordance with Generally Accepted Accounting Principles ("GAAP"). Carrisalez Aff. ¶¶ 16-19. SBCS and Pacific use different fixed asset records and ledger systems, providing assurance that SBCS's books, accounts, and financial records are separate from Pacific's books and records. Henrichs Aff. ¶ 11 (App. A, Tab 9); Carrisalez Aff. ¶ 17. A regular audit program and other internal and external controls further ensure accounting compliance. Carrisalez Aff. ¶ 19; Henrichs Aff. ¶¶ 37-43.

SBCS has separate officers, directors, and employees from Pacific. 47 U.S.C. § 272(b)(3); Carrisalez Aff. ¶¶ 20-24; Yohe Aff. ¶¶ 15-16.

Creditors of SBCS do not and will not have recourse to the assets of Pacific. In addition, SBCS does not and will not provide creditors indirect recourse to Pacific's assets through a non-section 272 affiliate of Pacific. 47 U.S.C. § 272(b)(4); Carrisalez Aff. ¶ 27; Yohe Aff. ¶¶ 17-18.

All transactions between Pacific and SBCS have been reduced to writing and are available for public inspection. See 47 U.S.C. § 272(b)(5); Henrichs Aff. ¶¶ 15-22; Carrisalez Aff. ¶¶ 28-51. Such transactions have been and will continue to be carried out on an arm's-length basis in accordance with the Commission's applicable affiliate transaction and cost-accounting rules. Henrichs Aff. ¶¶ 15-16; 49-51. This includes pricing services provided by Pacific at the higher of fully distributed cost or estimated fair market value. Id. ¶¶ 50-51. SBCS provides detailed written descriptions of all assets transferred or services provided in a transaction with Pacific and posts the terms and conditions of new transactions on the Internet within ten days. Carrisalez Aff. ¶¶ 30-49. Transactions remain posted for one year after their termination. Id. ¶ 46. Disclosures include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions. Henrichs Aff. ¶ 17; see also Carrisalez Aff. ¶¶ 32-33. For asset transfers, the quantity and, if relevant, the quality of the transferred assets are disclosed. Henrichs Aff. ¶ 17. For transactions involving services, disclosure includes (where relevant) the number and type of personnel assigned to the project, any special equipment used to provide the service, and the length of time required to complete the transaction. Id. ¶¶ 17, 23-26; Carrisalez Aff. ¶ 42. For each agreement, SBC provides information on the status of the agreement, the states affected, and the pricing methodology used to determine prices under the agreement. Henrichs Aff. ¶¶ 20, 22; Carrisalez Aff. ¶¶ 39-42.

Verified copies of these disclosures, including competitively sensitive billing information that is subject to confidentiality protections and is not posted on the Internet, are available for public inspection during regular business hours at Pacific's headquarters in San Francisco as well as SBC's offices in Washington D.C. Henrichs Aff. ¶ 15; Carrisalez Aff. ¶ 36.

Posting of the full text of all agreements on the Internet ensures that any unaffiliated entity has access to the necessary information to make an informed purchasing decision. Carrisalez Aff. ¶ 41. In addition, an unaffiliated entity may review competitively sensitive billing records according to a confidential disclosure procedure to be sure that the amounts billed to SBCS for a service or asset match the rate quoted in the agreement. Id. ¶¶ 36-37. This disclosure procedure is consistent with the Commission and Congress's recognition that Bell companies' proprietary information should be protected against unnecessary disclosure. Id. ¶ 37; 47 U.S.C. § 272(d)(3)(C).

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits Pacific from discriminating between SBCS and other entities. With the exception of those services subject to the joint marketing authority granted by section 272(g), Pacific makes available to unaffiliated entities any goods, services, facilities, and information that it provides or will provide to SBCS at the same rates, terms, and conditions. Yohe Aff. ¶¶ 19-27. These may include exchange access, interconnection, collocation, unbundled network elements, resold services, access to OSS, and administrative services. Id. ¶ 21. To the extent that Pacific develops new services for or with SBCS, it also will cooperate with other entities on a nondiscriminatory basis to develop such services, so long as it is required to do so under section 272. Id. ¶¶ 28-29.

Pacific does not and will not, for so long as the requirement applies, discriminate between SBCS and other entities with regard to dissemination of technical information and interconnection standards related to telephone exchange and exchange access services. Id. ¶ 37. Pacific will provide telecommunications services and network elements to SBCS using the same service parameters, interfaces and procedures, intervals, standards, and practices used to service other carriers and retail customers. Id. ¶¶ 21, 23, 31. Pacific will not discriminate between SBCS and other carriers in the processing of presubscribed interexchange carrier change orders. Id. ¶ 35. Pacific will not disclose any unaffiliated carrier's proprietary information without the unaffiliated carrier's consent. Id. ¶ 38.

Review Requirements of Section 272(d). Pursuant to section 272(d) and consistent with the Commission's rules, Pacific will obtain and pay for a biennial, independent federal/state review. Henrichs Aff. ¶¶ 37-43; Carrisalez Aff. ¶¶ 52-54. In accordance with section 272(d)(2), the independent auditor will provide this Commission, the California state commission, and other involved state commissions with access to working papers and supporting materials relating to its review. Henrichs Aff. ¶¶ 41-42. And, as required by section 272(d)(3), SBC and its affiliates, including SBCS and Pacific, will provide the independent auditor, the FCC, the California PUC, and other involved state commissions with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements of section 272(b). Id. ¶¶ 41-42; Carrisalez Aff. ¶ 54.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), Pacific will fulfill, on a nondiscriminatory basis, all requests from unaffiliated entities for telephone exchange and exchange access services within the same intervals as these services are provided to SBCS. Yohe Aff. ¶¶ 31-36. To preclude discrimination, SBCS's requests are placed and processed using the same organizations, procedures, and OSS interfaces as requests from unaffiliated carriers. Id. ¶¶ 32-35; see Second Louisiana Order ¶ 348.

Pacific will comply with section 272(e)(2) by providing any facilities, services, or information concerning its provision of exchange access to SBCS only if such facilities, services, or information are made available to other authorized providers of interLATA services in that market on the same terms and conditions. Yohe Aff. ¶¶ 37-39. In accordance with section 272(e)(3), Pacific will charge SBCS rates for telephone exchange service and exchange access that are no less than the amount Pacific would charge any unaffiliated interexchange carrier for such service. Id. ¶¶ 40-41. To the extent that Pacific provides (under regulatory authorization) interLATA or intraLATA facilities or services to SBCS, Pacific will make such services or